

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6263 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHWAJA KHANJIMIA SAIYED

Versus

DGP & IGP

Appearance:

MR JR NANAVATI for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2

ORAL JUDGEMENT

The petitioner had sought a direction for setting aside the notice dated 26.11.1986 at Annexure "A" to the petition, given by the Director General of Police, who is the competent authority to the petitioner under Rule 161(1)(aa)(i)(1) of the Bombay Civil Service Rules, retiring the petitioner prematurely in public interest from service and granting 3 months' pay and allowances, in lieu of the notice.

2. According to the petitioner, he was selected as Police Sub-Inspector and after completion of his training, he was confirmed as P.S.I. Thereafter, he was promoted as Police Inspector on 1st July, 1972. He had a meritorious record and was awarded several prizes. However, a notice dated 26.11.1986 was issued on the petitioner by the respondent No.1, informing him that it was decided to prematurely retire him in public interest. It is contended that the notice was issued without application of mind to the relevant record and was therefore, violative of the fundamental rights of the petitioner guaranteed by Articles 14 and 16 of the Constitution. It is also contended that the confidential record of the petitioner would not justify such an order. It is also contended that the requirements for such premature retirement have not been complied with. It is the petitioner's say that the confidential records are good and no adverse remarks have been communicated to him and that in view of his confidential records, the respondents did not have any material for issuing a notice for premature retirement under the said provision.

3. Under Rule 161(1)(aa)(i)(1) of the said Rules, an appointing authority, if he is of the opinion that it is in the public interest so to do, has an absolute right to retire any Government servant to whom clause (a) applies, by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice, on or after the date he attains the age of fifty years if he is in Class I or Class II service or post or in any unclassified gazetted post, the age limit for the purpose of direct recruitment to which is below thirtyfive years. The age limit for the purpose of direct recruitment to the post in question was below 35 years and no dispute has been raised by the petitioner on that count. Therefore, the petitioner could have been retired under the said provision at any time after he attained the age of 50 years, if the requirements enabling the Competent Authority to make such retirement were satisfied. The Government, in their affidavit-in-reply, have stated that after considering all the aspects of the matter in which the confidential record of the petitioner for last 8 to 10 years was examined, the decision was taken to retire the petitioner prematurely, in accordance with the said provision. It is stated that the Review Committee met on 16.9.1986 and examined the petitioner's case whether he should be continued in service beyond the age of 50 years. The recommendation of the Review Committee was received in the Home Department on 3.10.1986 through the Director General of Police and the State Government, having

considered the petitioner's confidential report for 10 preceding years and having scrutinised the reports made by the Review Committee, decided to retire the petitioner at the age of 50 years in public interest. It is stated that the guidelines issued by the Government for premature retirement were scrupulously followed in the case of the petitioner. It is stated that the petitioner was superseded to the post of Police Inspector in August, 1971 and June, 1972 because of lack of meritorious record. It is also stated that adverse remarks were communicated to the petitioner for the period from 12.4.1976 to 15.10.1976; 21.11.1976 to 31.3.1977 and for the year 1982-83. It is further stated that at the time of making the impugned order, two Departmental enquiries were pending against the petitioner. The petitioner had, pursuant to the impugned order, handed over the charge of his post on 4.12.1986. It is thus, clear that as per the guidelines prescribed for the purpose, the Review Committee had considered the petitioner's case and having regard to his record of past performance, a decision has been taken in consonance with the provisions of the said Rule, enabling the State Government to make such premature retirement. There is therefore, no warrant for interference with the impugned notice prematurely retiring the petitioner, which has already operated. The petition is therefore, rejected. Rule is discharged with no order as to costs.

*/Mohandas